

United States District Court  
District of Massachusetts  
Western Division

TRIF Company  
Plaintiff

v.

Chris Morris d/b/a International Housewares,

Frank Stoegarar d/b/a Worldwide Marketing,

Zia Biao Xu and Zhi Xiong Xu d/b/a Earth Link

LLC

C.A. No. -04-

04-30194-MAP

First Verified Complaint

Parties

1. Plaintiff TRIF Company is a Texas Corporation with offices located in the State of Rhode Island.
2. Defendant Chris Morris, upon information and belief, is a specialty retail vendor d/b/a International Housewares with an office at 6601 Ventor Ave. Suite 305 Ventor, NJ 08406.
3. Defendant Frank Stoegarar d/b/a Worldwide Marketing has an office at 859 Mullen Ave. Los Angeles, CA 90005.
4. Defendants Zia Biao Xu and Zhi Xiong Xu d/b/a Earth Link LLC maintain an office at 178 Hester Street, New York, New York 10013.
5. Upon information and belief, Defendants have worked together to manufacture, import and distribute a pillow product based on the Plaintiff's product and trade dress.

Jurisdiction

6. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 (Federal Question) and 28 U.S.C. § 1338 (Copyrights, patents and trademarks).

- 1 7. Defendants are currently doing business in the Commonwealth of Massachusetts and have  
2 established the requisite minimum contacts to invoke the jurisdiction of this Court.  
3

4 **Background**  
5

- 6 8. For the past fifteen years, David Harmon, President of TRIF Company, has been fully engaged in  
7 specialty retail selling at temporary locations.  
8 9. The specialty retail industry involves the development and marketing of specialty items at venues  
9 such as state fairs like the Big Exposition in Springfield, Massachusetts. See Exhibit 1. (The  
10 Summer 2004 Specialty Retail Magazine).  
11 10. Approximately one year ago David Harmon established TRIF Company, a Texas corporation with  
12 offices in Rhode Island, to promote a line of therapeutic pillows.  
13 11. TRIF Company conducted extensive research into these pillows including analysis by medical  
14 professionals. See Exhibit 2 (Medical Endorsement).  
15 12. TRIF Company developed manufacturing specifications for the pillows which include water  
16 resistant covering material of a nylon/spandex blend that is machine washable and dryable,  
17 premium medical grade micro-beads from Holland, tape reinforced seams, double locked stitched  
18 seams, double sewn closures, and hypo-allergenic and FDA approved materials.  
19 13. TRIF Company invested hundreds of thousands of dollars in the development, advertising,  
20 manufacturing, importing and distribution of this product line over the past year. See Exhibit 3.  
21 (Examples of Advertising)  
22 14. TRIF Company had special packaging designed for the pillows by Doug Wolley of Cranston,  
23 Rhode Island, who created a largely transparent bag for the pillows with distinctive lettering and  
24 logos. One version of the bag includes the slogans "SNOOZTIME on the Beach" and "The Next  
25 Best Thing!"  
26 15. Another version of the bag designed by Wolley for TRIF Corporation says "SNOOZTIME" and  
27 "A Relaxing Experience".  
28 16. The pillows are marketed under the trademark name SNOOZTIME.  
29 17. The SNOOZTIME pillows are sold in ten to twelve colors including some fluorescent colors and  
30 wholesale at a price of \$6.50 to \$8.00 each.

- 1 18. The pillows are sold in state fairs across the country including the current Big Exposition in  
2 Springfield, Massachusetts, which runs from September 17 to October 3, 2004.
- 3 19. The SNOOZTIME therapeutic pillows were introduced to the market on July 4, 2004 at the  
4 Delmar California Fair at a rental cost of \$ 12,500 plus related expense.
- 5 20. TRIF Company sells the product to individuals on a retail basis as well as bulk purchase  
6 customers who typically operate specialty kiosks in malls.
- 7 21. TRIF Company also markets the pillows to department stores and chain stores.
- 8 22. Earlier this year, Frank Stoegarar of Worldwide Marketing, tried to buy TRIF Company's  
9 inventory of therapeutic pillows for his specialty retail firm, but Plaintiff refused to sell.
- 10 23. At or near the time of the debut of the SNOOZTIME therapeutic pillow line, Frank Stoegarar  
11 and/or Zia Biao Xu or their agent(s) acquired one or more SNOOZTIME pillows.
- 12 24. At the Big Exposition in Springfield, Massachusetts on September 21 of this year, Plaintiff  
13 learned that Frank Stoegarar in conjunction with Zia Biao Xu and Chris Morris of International  
14 Housewares were selling a copy of the SNOOZTIME therapeutic pillow at a price of \$3.40 to  
15 \$6.50 each.
- 16 25. Plaintiff acquired one of Morris's pillows and upon examination immediately detected a strong  
17 odor of petroleum, a lighter covering material that easily runs and pulls, industrial grade beads  
18 with a distinctive odor from China, fewer large beads with irregular surfaces than the  
19 SNOOZTIME product, no seam reinforcement, inferior seam stitching, a counterfeit label and  
20 most importantly an offensively and virtually identical packaging.
- 21 26. The Morris package reads "ZZZ's Time on the Couch" and "The Next Best Stuff" in a largely  
22 transparent bag with identical markings and lettering as the SNOOZTIME bag.
- 23 27. The drawstring, artwork, coloring, and logo style are identical.
- 24 28. The introduction of this product line at the Big Exposition, where TRIF Company has invested a  
25 significant sum to market its therapeutic SNOOZTIME pillows, has confused SNOOZTIME's  
26 customers.
- 27 29. During the first two days of the Big Exposition, 75% of TRIF Company's sales were  
28 SNOOZTIME's therapeutic pillows.
- 29 30. That figure decreased to 40% of sales as of September 22, after Morris began selling the copycat  
30 pillows in packaging virtually identical to SNOOZTIME.

- 1 31. Upon information and belief, Morris and his associates have criticized the SNOOZTIME pillow  
2 line, alleging erroneously that the products are not washable.
- 3 32. Upon information and belief, Morris and his associates are grossing more than \$1,200 a day  
4 selling their infringing pillow products and that the Morris group has purchased 5,000 pillows for  
5 sale in this country.
- 6 33. Plaintiff has lost retail and bulk sales to the Morris group based on reduced sales as well as  
7 information I have gathered from the field.
- 8 34. Plaintiff's projected gross sales at the Big Exposition was \$70,000-\$80,000 prior to the  
9 introduction of the knock-off products by the Morris group.
- 10 35. Plaintiff has also invested in more than 42 freight containers from China, each containing  
11 approximately 7,000 pillows, as well as an additional 45 containers either in production or in  
12 transit.
- 13 36. Plaintiff's rental costs for the Big Exposition is approximately \$4,000 not including  
14 transportation, advertising, labor and marketing materials such as posters.
- 15 37. In addition to stealing customers from TRIF Company, the Morris group has harmed the  
16 reputation of SNOOZTIME and TRIF Company for quality, has diluted the SNOOZTIME  
17 trademark by confusing SNOOZTIME therapeutic pillows with inferior knock-off products and  
18 has caused TRIF Company incalculable losses.

19  
20  
21 **Count I**

22 **Trade Dress Infringement**

- 23
- 24 38. Plaintiff re-alleges and incorporates paragraphs 1-37 as though fully set forth herein.
- 25 39. Plaintiff has developed a reputation in the specialty retail industry for the distinctive look, feel and  
26 design of its pillow and pillow packaging.
- 27 40. Defendants have infringed on Plaintiff's trade dress in violation of the Lanham Act, 15 U.S.C. §  
28 1125 et seq. by copying the look, feel and design of Plaintiff's pillow and pillow packaging.
- 29 41. Consumers and retail stores confused the Defendants' pillows and pillow packaging with the  
30 Plaintiff's pillows and pillow packaging.

1 42. This confusion has caused substantial harm to Plaintiff in terms of lost sales, customers and  
2 diminished reputation for quality and fair pricing.

3 Wherefore, Plaintiff demands treble damages plus interest, costs, and attorneys' fees incurred in this  
4 action.

5  
6 **Count II**

7 **Unfair Competition**

8 43. Plaintiff re-alleges and incorporates paragraphs 1-42 as though fully set forth herein.

9 44. Without the consent or approval of Plaintiff, Defendant's wrongfully misappropriated, sold and  
10 distributed unauthorized and confusingly similar pillows and pillow packaging.

11 45. Defendants' confusingly similar pillow and pillow packaging are inferior to Plaintiffs product in  
12 craftsmanship and design but are virtually the same product packaging which confuses consumers  
13 who believe that such inferior product is that of the Plaintiffs.

14 46. Stores selling Plaintiff's designs and consumers have been confused by the Defendants' products  
15 believing that the Plaintiff's is the source of the illegal products.

16 47. As a direct and proximate result of the unauthorized copying, Plaintiff has suffered injury to its  
17 reputation and a loss of income.

18  
19 Wherefore, Plaintiff demands treble damages plus interest, costs, and attorneys' fees incurred in this  
20 action.

21  
22 **Count III**

23 **Tortious Interference with Prospective Contractual Opportunity**

24 48. Plaintiff re-alleges and incorporates 1-47 as though fully set forth herein.

25 49. Without the consent or approval of Plaintiff, Defendants wrongfully misappropriated, sold and  
26 distributed unauthorized and confusingly similar pillows and pillow packaging.

27 50. Plaintiff and Defendants sell their products in similar markets at many of the same venues,  
28 including but not limited to the Big Exposition in Springfield, Massachusetts.

29 51. By introducing their infringing product at the Big Exposition in September 2004, Defendants  
30 intentionally confused Plaintiff's retail and bulk customers and caused Plaintiff to lose sales and  
business opportunities.

1 52. This interference with prospective contractual relations has caused the Plaintiff to lose significant  
2 sales and profits.

3  
4 Wherefore, Plaintiff demands damages plus interest, costs, and attorneys' fees incurred in this action.

5  
6  
7 **Count IV**  
8 **Violation of MGL 93A**  
9

10 53. Plaintiff realleges and incorporates paragraphs 1-52 as though fully set forth herein .

11 54. Without the consent or approval of Plaintiff, Defendant's wrongfully misappropriated, sold and  
12 distributed unauthorized and confusingly similar pillows and pillow packaging.

13 55. Defendant's sale of its infringing product and product packaging at the Big Exposition in  
14 September 2004 constitutes unfair and deceptive trade practice substantially and primarily  
15 occurring in the Commonwealth of Massachusetts.

16 56. Plaintiff has been injured by Defendants unfair and deceptive trade practices.

17  
18 Wherefore, Plaintiff demands treble damages plus interest, cost, and attorneys' fees incurred in this  
19 action.

20  
21 **Count V**  
22 **Declaration Judgment**  
23

24 57. Plaintiff re-alleges and incorporates paragraphs 1-58 as though fully set forth herein.

25 58. Plaintiff's pillows are duly registered with the Commonwealth of Massachusetts; and

26 59. Upon information and belief, Defendants' pillows have a counterfeited or copied label containing  
27 erroneous information about the manufacturer and importation of the product as well as necessary  
28 government approvals.

29 60. Plaintiff's labeling complies with all applicable laws.

30 Wherefore, Plaintiff requests a declaration judgment holding the Defendants' infringing pillows do not  
meet legal requirements for such products and are labeled with misleading and erroneous information.

Wherefore, Plaintiff requests a declaration judgment holding the Defendants' infringing pillows do not meet legal requirements for such products and are labeled with misleading and erroneous information.

**Prayer for Relief**

Wherefore Plaintiff request that this Court order Defendants to

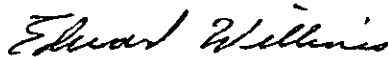
- A. Cease and desist from making, selling and distributing confusingly similar pillow and pillow packaging;
- B. Have all Defendants' confusingly similar pillows and pillow packaging immediately seized from the Big Exposition in Springfield Massachusetts;
- C. Notify all people that purchased these items ordering an immediate recall at Defendants' expense;
- D. Deliver to Plaintiff all of Defendants' infringing packaging for destruction;
- E. Pay Plaintiff compensation in the amount of \$ 500, 000 or an amount which the court deems just;
- F. Pay Plaintiff a total of \$1,000,000 or an amount the Court deems just for punitive damages;
- G. Pay Plaintiff's attorneys' fees and costs, and further
- H. To find that Defendants have mislabeled their products in violation of law.

**VERIFICATION**

I, David Harmon, do herein certify upon oath and under the pains and penalties of perjury that the foregoing allegations are a true and accurate account and are my personal knowledge and belief.

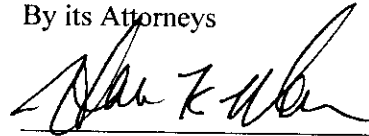
  
David Harmon

Date

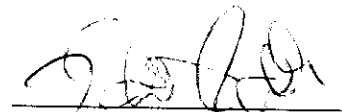


Witness

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12 Respectfully submitted by,  
13 Plaintiff,  
14 By its Attorneys

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16

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# Specialty retail

THE COOL GUYS OF HOTHEADZ  
BRUCE SINGER AND JAY OXENHORN

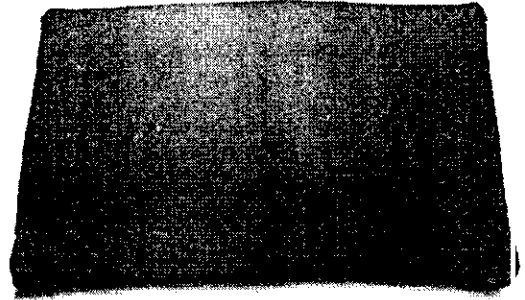
**The Cool Guys  
of HotHeadz**  
**Bruce Singer and  
Jay Oxenhorn**



## NEW **SNOOZTIME™ DREAMER** PILLOW ENDORSED BY LEADING CHIROPRACTOR

"The new **DREAMER™** PILLOW has many distinct advantages over regular foam pillows." — Dr. James Baggio, D.C.

1. First of all, they are very comfortable!
2. If you are a side sleeper, the pillow will mold to your shoulder height allowing you to keep your neck in line with your spine vs. being bent or crooked.
3. If you are a back sleeper, the pillow nicely fills the gap between your neck and the bed and keeps the proper curvature in your neck (arched slightly forward, towards your throat).
4. Many of the cervical pillows on the market will lose their support and need to be replaced, often within a years time. Snooztime™ pillows should maintain their supportive qualities indefinitely, due to the flexible qualities of the filling.
5. The entire pillow can easily be machine washed, as opposed to just the pillow case.
6. People who are unable to enjoy the supportive qualities of a down pillow due to allergies can now enjoy the same supportive qualities of down in a Snooztime pillow without the discomfort of allergies.
7. They feel really cool and comfortable!!!



James Baggio D.C.

# **SNOOZTIME™**

Just a Better Pillow

**For further information, visit [snooztime.com](http://snooztime.com) or call 1-800-336-0088**

# Next Hottest

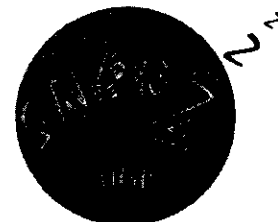
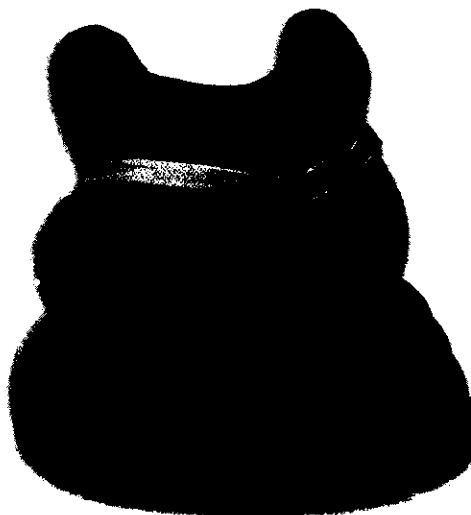
# New Product!

**GREAT FOR:**  
Travel  
Lounging  
Sleeping  
Camping  
**FUN!**



**Your customers will**  
*touch it, love it, buy it!*

- ◆ Universally loved by all
- ◆ Proven high volume sales
- ◆ Full line of sizes, shapes and colors
- ◆ High Quality
- ◆ Machine washable
- ◆ Complete turnkey concept—everything needed to start
- ◆ Low start up cost—includes enough product to triple your investment
- ◆ Retail price points \$14.95 to \$44.95



For Information Call:  
1-800-336-0088  
[www.texrif.com](http://www.texrif.com)  
[sales@texrif.com](mailto:sales@texrif.com)  
**TRIF CORPORATION**  
231 VZCR 4104  
Canton, TX 75103



# The World's Best Pillow is

*Squishy*

*Snuggly*

Visit  
heatw





Your Snooztime pillow will provide years of comfort with only minimal maintenance and cleaning. The pillow shell is a blend of super stretch Nylon and Spandex, and the filling is 100% polystyrene foam beads.

***Washing Instructions:***

The Snooztime pillow can be hand washed in warm water using a mild detergent and then air dried. Using an oxygen bleach or enzyme pre-wash can help remove stubborn stains.  
DO NOT USE CHLORINE BLEACH.

The Snooztime pillow can also be machine washed on a Gentle cycle using warm water, mild detergent and oxygen bleach, and then dried in the dryer using the Fluff setting.  
DO NOT USE CHLORINE BLEACH.



***Please Print:***

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Where Purchased: \_\_\_\_\_

Date Purchased: \_\_\_\_\_

**Warranty**

Snooztime™ warrants to the original purchaser that our pillows will be free from defects in materials and workmanship for a period of 90 days from the date of the original sales receipt. If during the warranty period our pillows are found to have defects in materials or workmanship they will be replaced without charge. Except as set forth above, Snooztime makes no other warranties, either express or implied, including the implied warranties of merchantability or fitness for a particular purpose. In no event will Snooztime, its employees or officers, or employees and officers of the parent corporation be liable for incidental or consequential damages of any kind, whether such damages are claimed on account of breach or warranty, breach of contract, or strict product liability, including without limitations, damage to property or other economic losses. This limited warranty gives you specific legal rights and you may also have other rights, which vary from state to state.



Visit us on the web @ [www.snootztime.com](http://www.snootztime.com)

(800) 336-0088 Toll



NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

**BUSINESS REPLY MAIL**

FIRST-CLASS MAIL

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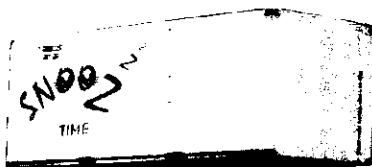
CANTON TX

POSTAGE WILL BE PAID BY ADDRESSEE

CUSTOMER SERVICE  
TEXAS RHODE ISLAND FORWARDING  
231 VZCR 4104  
CANTON TX 75103-9987





SNOOZ  
TIME**ATTENTION:  
PUSHCARTS AND KIOSKS****The World's Best Pillow Is Your Next  
Hottest New Product!****NOW... BUY BY THE  
CONTAINER LOAD!****PLAN #1 BUY A 20 FT. CONTAINER**

PILLOW STYLE	QTY PER CONT.	PRICE EA.	YOUR COST	SELL PRICE	TTL SALES	PROFIT
ORIGINAL SNOOZ	1500	\$5.20	\$7800.00	\$19.95	\$29925.00	\$22125.00
U- SNOOZ NECK	350	5.50	1925.00	29.95	10482.50	8557.50
ANYWHERE SNOOZ	350	6.60	2310.00	34.95	12232.50	9922.50
SNOOZ DREAMER	150	9.10	1365.00	49.95	7492.50	6127.50
LUMBAR SNOOZ	150	7.60	1140.00	29.95	4492.50	3352.50
BODY SNOOZ	150	9.10	1365.00	44.95	6742.50	5377.50
<b>TOTALS:</b>	<b>2650</b>		<b>\$15,905.00</b>		<b>\$71,367.50</b>	<b>\$55,462.50</b>

TERMS: See all Terms below.

**PLAN #2 BUY A 40 FT. CONTAINER**

PILLOW STYLE	QTY PER CONT.	PRICE EA.	YOUR COST	SELL PRICE	TTL SALES	PROFIT
ORIGINAL SNOOZ	3500	\$5.20	\$18,200.00	\$19.95	\$69825.00	\$51625.00
U- SNOOZ NECK	800	5.50	4400.00	29.95	23960.00	19560.00
ANYWHERE SNOOZ	800	6.60	5280.00	34.95	27960.00	22680.00
SNOOZ DREAMER	300	9.10	2730.00	49.95	14985.00	12255.00
LUMBAR SNOOZ	300	7.60	2280.00	29.95	8985.00	6705.00
BODY SNOOZ	300	9.10	2730.00	44.95	13485.00	10755.00
<b>TOTALS:</b>	<b>6000</b>		<b>\$35,620.00</b>		<b>\$159,200.00</b>	<b>\$123,580.00</b>

TERMS: See all Terms below.

**PLAN #3 ORDER W/ DEFERRED SHIPPING**

SAME PLAN AS ABOVE EXCEPT YOU ARE PLACING YOUR ORDER NOW FOR GUARANTEED NOVEMBER DELIVERY, JUST IN TIME FOR HOLIDAY SELLING! THE ONLY DIFFERENCE IN COST TO YOU IS .75 CENTS PER UNIT INCREASE. THE SURCHARGE IS REQUIRED BECAUSE WE CARRY THE BALANCE UNTIL YOUR ORDER SHIPS. THIS PLAN WILL GIVE YOU THE SECURITY OF KNOWING YOU WILL HAVE AMPLE PRODUCT DURING THE PEAK HOLIDAY BUYING PERIOD, WITHOUT SCRAMBLING FOR PRODUCT AT THE LAST MINUTE. THE MOST VERSATILE PLAN!

**THIS PLAN IS ONLY AVAILABLE UNTIL SEPTEMBER 15, 2004.****AFTER THAT, WE CANNOT GUARANTEE HOLIDAY DELIVERY!!!****PLAN #4 BUY DIRECT FROM OUR WAREHOUSE**

PILLOW STYLE	QTY PER CASE	PRICE EA.	SELL PRICE
ORIGINAL SNOOZ		\$8.00	\$19.95
U- SNOOZ NECK		9.50	29.95
ANYWHERE SNOOZ		10.50	34.95
SNOOZ DREAMER		16.50	49.95
LUMBAR SNOOZ		9.50	29.95
BODY SNOOZ		15.50	44.95

Orders from this plan are shipped directly from our warehouses in Texas, Rhode Island, Los Angeles, Seattle, Toronto, or Vancouver. Please call for details.

**TERMS**

1. All goods F.O.B. China
2. 50% deposit upon order placement
3. Product usually ships 2-3 weeks from order placement.
4. Balance to be paid when container leaves China.
5. We can provide a Broker for buyer if needed
6. Buyer is responsible for Customs, Insurance, & Freight Charges.
7. Container will be delivered to your specified location.
8. Loss of deposit if balance is not paid when required.
9. TRIF Corp. not responsible for delays for any reason.

**BEWARE OF IMITATORS!****For Information Call:**

David Harmon 972-567-4133 or Kevin McIntyre 401-952-4586



*distributed exclusively by*  
**TRIF CORPORATION**

1-800-336-0068  
sales@trif.com

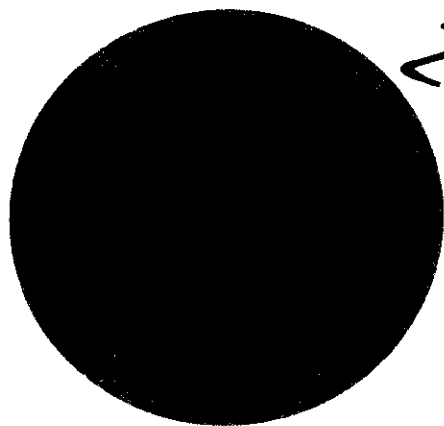
**TRIF Co. Inc. 231 VZ 4104 Canton Texas 75103**

# Therapeutic Neck Pain Relief

## "U-SNOOZ" NECK REST PILLOW

"FOR A REAL PAIN IN THE NECK!"

- Therapeutic
- Relieves Tension
- Helps Posture
- Eases Fibromyalgia



— SPANDEX SIDE KEEPS YOU  
COOL AND COMFORTABLE  
IN THE HEAT OF SUMMER

**great for**

- cars,
- boats,
- trains,
- planes,
- beaches,
- stadiums!

**ANYWHERE!**



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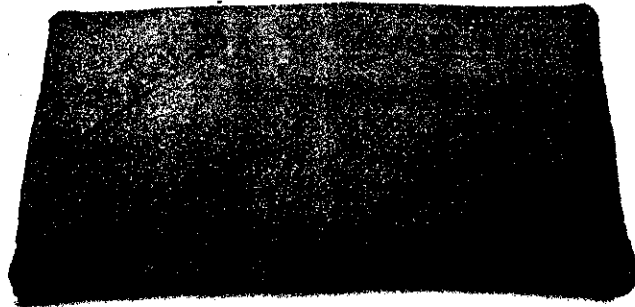
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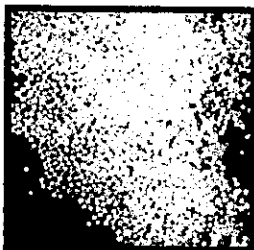
# SNOOZTIME™ DREAMER™

## THE DREAMER™

is a luxurious full-size bed pillow with the incredible comfort, support and easy care of our Snooztime™ personal and travel pillows. The fill of the Dreamer™ is made exclusively of ultra slippery "microbeads", providing uniform support to your head and neck throughout the night.



Unlike expensive "memory foam", our microbead fill moves when you move, continuously changing to meet your support needs. There are no zippers or hardware of any kind and the durable stretch cover won't bunch up or fold over, so no more "pillow marks" or "bed face" in the morning! Made of durable Cotton, Polyester and Microbeads, the Dreamer™ is naturally hypoallergenic and resists the growth of mold, mildew and bacteria. And the Dreamer™ is completely washable\*.



Polystyrene microbead filling

How many pillows have you owned that you could easily and safely wash?  
Check out these great features:

- Completely washable\*
- Incredible comfort
- Uniform support
- 27" x 15" x 4"
- Hypoallergenic
- Durable
- Easy care
- Just 24.69 ounces

\*see product care tag

**SNOOZTIME™ DREAMER™**  
the "Ultimate Good Night's Rest"

**SNOOZTIME**  
Just a Better Pillow

(800) 336-0088

[www.snooztime.com](http://www.snooztime.com)